

DOCKET FILE COPY ORIGINAL  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

RECEIVED

JUN 13 1997

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Advanced Television Systems )  
and Their Impact upon the ) MM Docket No. 87-268  
Existing Television Broadcast Service )

To: The Commission

**Petition for Reconsideration**

Longmont Channel 25, Inc., by its attorney and pursuant to Section 1.429 of the Commission's Rules and Regulations, hereby respectfully submits a Petition for Reconsideration with respect to MM Docket 87-268. In support thereof, the following is shown:

**A. Background**

1. Longmont Channel 25, Inc. is the licensee of KDEN (TV), Longmont, Colorado.

2. On April 3, 1997, the Federal Communications Commission ("FCC") adopted its Fifth Report and Order and Sixth Report and Order in MM Docket 87-268.<sup>1</sup> Given the common issues and substance of both Report and Orders, they shall be collectively referred to herein as the "R & O". Generally speaking, the R & O sought to address a wide variety of issues surrounding digital television, e.g., eligibility, spectrum use,

---

<sup>1</sup> The release date for the subject R & O's was April 21, 1997.

No. of Copies rec'd  
List A B C D E

0244

procedural matters, allocations/allotment preferences, etc. The following represents subject areas in which Longmont Channel 25, Inc. respectfully submits that the FCC erred in the R & O and where reconsideration is appropriate.

**B. The Commission's DTV Allotment System Has Arbitrarily Denied Existing Licensees the Right to Upgrade to Maximum Facilities**

3. The net effect of the Commission's DTV allotment system has been to arbitrarily rewrite the Commission's existing rules and regulations regarding upgrading to maximum facilities and to promulgate new standards for facility improvements, all without proper opportunity for public comment on said proposed changes. Specifically, the present NTSC allocation plan is based solely on certain minimum mileage separations. All stations which comply with the applicable minimum mileage separations between the respective transmitter sites are entitled to apply for the maximum facilities without regard for any additional allocation considerations.

4. Prior to the issuance of the R & O, FCC licensees and permittees had no expectation that the fundamental process for upgrading facilities would be significantly altered and that totally new processing rules would be invoked.<sup>2</sup> As noted in the attached engineering statement, many UHF stations, including KDEN (TV), operate with less than maximum facilities even though they would be otherwise entitled to do so upon

---

<sup>2</sup> It should be noted that the new DTV upgrade/modification rules do not provide any "grandfathering" or other similar window for "less than maximum facility" licensees/permittees to seek maximum NTSC facilities which would translate into equivalent upgraded DTV allotments.

the filing and subsequent grant of the appropriate modification application.<sup>3</sup> In the case of KDEN (TV), its ERP of 5,000 kw is the maximum permissible for any U.H.F. station but its authorized height above average terrain is approximately one-half of the maximum permissible value of 610 meters.

5. By the FCC's own admission, the issues surrounding DTV are constantly in a state of flux. Given the largely theoretical nature of the fledgling service, real-life issues such as availability of equipment, actual coverage area, available tower sites, zoning<sup>4</sup>, etc. shall loom large. It is patently unfair that existing broadcasters should be asked to assist the FCC in working through the delicate DTV issues, yet be unpleasantly surprised in the most recent R & O to learn that a vested legal right to upgrade to maximum facilities has been replaced by an amorphous invitation (i.e., stations may improve their facilities based upon a demonstration that "no new interference is caused to other stations"). As noted in the enclosed engineering statement, based upon the vagaries of the allocation circumstances surrounding any particular DTV allotment, such a "demonstration" may or may not be possible. At the present time, the lack of maturity of the new allocation rules combined with the inevitable adjustments to be fashioned in response to Petitions for Reconsideration (as well as the FCC's stated intention of

---

<sup>3</sup> Many licensees and permittees who have been eligible to upgrade their NTSC facilities have held off doing so in light of the FCC's long and ever-changing DTV decisions and the FCC's explicit admonition that any construction permits issued would be subject to subsequent DTV rulings.

<sup>4</sup> For example, the addition of new antenna structures on existing towers may raise structural issues as well as issues regarding land use and zoning permits.

reviewing the DTV allotment scheme every two years) will undoubtedly make it impossible for a licensee to determine with a high degree of certainty whether or not its existing facility will be entitled to apply for enhanced facilities on a non-interference basis.<sup>5</sup>

6. In summary, the R & O has stripped Longmont Channel 25, Inc. and other similarly-situated licensees/permittees of a vested legal right without due process. The Commission's DTV allotment plan should be revised to protect the maximum authorized facilities of existing stations and permittees. While there are other similar acceptable alternatives (as discussed in the attached engineering statement), the basic requirement of equity and fairness should not be ignored. The fact that a station has not been able to achieve maximum facilities in this period of flux in the DTV era does not mean that it should be unfairly penalized. The public interest mandates that existing licensees and permittees be afforded a reasonable measure of protection from arbitrary rule changes which have a severe impact upon their ability to serve the public and to compete in the marketplace. One of the enunciated goals of the Commission in its R & O was to "promote spectrum efficiency". It cannot logically be argued that it is efficient spectrum management to promote haphazard, "race to the courthouse" filing procedures during an admittedly unsure time. Since the Commission itself is unclear as to what will or will not constitute "acceptable interference", how can it possibly expect its licensees to be able to make that determination? Again, logic dictates that existing

---

<sup>5</sup> The lack of sufficient software modeling tools may very well exacerbate this problem.

licensees be protected at least to the extent that they are now under the existing NTSC rules (i.e., to maximum facilities).<sup>6</sup>

**C. The Commission's DTV Allotment Plan Has Created Unjustified Spectrum Inequality**

7. A presumably unintended, yet nonetheless real consequence of the Commission's DTV allotment plan and its failure to protect stations up to their maximum facilities has been that UHF allotments which were previously afforded an equal piece of the spectrum (and the opportunity to provide service to a roughly equivalent geographical area) have been stratified based upon their existing NTSC facilities with no regard for their future service requirements. In short, absent appropriate modifications to the Commission's DTV allotment plan, some stations are certain to be restricted to less than maximum facilities. Not only does this fly in the face of the Commission's long-stated goal of maintaining parity between stations of similar classification, it also (as stated above) arbitrarily and for no good policy reason punishes licensees and permittees whose sole "sin" was to seek guidance from the FCC before filing knee-jerk modifications which the FCC had on countless occasions stated would be subject to the outcome of the DTV proceeding. In other words, the Commission has explicitly and implicitly warned broadcasters that it would be prudent to

---

<sup>6</sup> A possible compromise between protection of existing NTSC rights and future processing rules may very well involve a transitional period during which licensees and permittees could file as a matter of right for maximum facilities before the new DTV processing rules become effective.

await the Commission's DTV rulings, yet has pointedly penalized in the R & O any licensee or permittee which was "prudent".

8. The present analog allocations system is based upon simple and uniformly applicable standards. The proposed DTV allocations plan is not and the Commission has proffered absolutely no objective rationale as to why it is not. In no situation is administrative expediency or processing simplicity any justification whatsoever for arbitrarily denying firmly-entrenched rights.

**D. The Commission's DTV Allotment Plan Requires  
the Issuance of a New Notice of Proposed Rulemaking**

9. As noted in the attached engineering statement, the Commission's allotment plan as promulgated in the Sixth Report and Order is such a radical departure from that set forth in the Sixth Further Notice of Proposed Rulemaking as to render the "notice" (and opportunity for comment) provided thereby invalid. In this case, the DTV facilities proposed for KDEN (TV) in the Sixth Further Notice of Proposed Rulemaking were 368.8 kw as opposed to the 210.0 kw which was ultimately awarded in the R & O. While the Commission is arguably not limited to the adoption or rejection of proposals advanced in an NPRM, an R & O most certainly must bear some resemblance to the underlying NPRM or else the validity of the comment process is undermined.

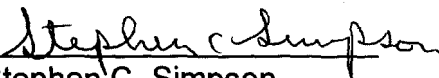
## **F. Conclusion**

The Commission's DTV allotment plan as currently promulgated is patently unfair to existing licensees and permittees. The Commission has arbitrarily, and without any factual justification, proposed a principle of "service replication" which essentially replaces an existing set of administrative and procedural rules. The adoption of this new methodology, without adequate notice or opportunity for comment, ignores several critical factors which will ultimately lead to spectrum inequality and inefficiency.

Wherefore, based on the foregoing, it is respectfully requested that Longmont Channel 25, Inc.'s subject Petition for Reconsideration be granted and that the changes proposed therein be adopted.

Respectfully submitted,

**Longmont Channel 25, Inc.**

By:   
Stephen C. Simpson  
Its Attorney

1090 Vermont Avenue, N.W.  
Suite 800  
Washington, D.C. 20005  
(202) 408-7035

**ENGINEERING STATEMENT OF D.C. WILLIAMS, Ph.D., P.E., CONSULTING ENGINEER**

This Engineering Statement is prepared on behalf of Longmont Channel 25, Inc. in support of the instant Petition for Reconsideration of the Commission's adoption of the Sixth Report and Order ("R&O") (FCC 97-115) and the Fifth Report and Order (FCC 97-116) (referred to collectively as "R&O") in MM Docket No. 87-268, both adopted April 3, 1997 and released April 21, 1997. Longmont Channel 25, Inc. ("LC25") is the licensee of UHF-TV station KDEN, Channel 25 at Longmont, Colorado.

In said R&O, the Commission adopted a Table of Allotments for digital television ("DTV") and disposed of other issues relating to the transition from the present analog system to the newly-adopted digital service. As described in the R&O, the DTV allotment plan has been based on the principle of "service replication", whereby each station's DTV allotment has been selected to provide anticipated service as closely approximating its present analog NTSC service as possible. LC25 contends that the results of this "service replication" methodology employed in generating the DTV Table of Allotments neglects several important factors which will adversely affect the ability of LC25 and KDEN to serve the public.

1. The Commission's DTV allotment system has essentially deprived stations operating at less than maximum facilities the right to upgrade to maximum facilities as a matter of right, an option which exists under the present allocation scheme. As the present NTSC allocation plan is based solely on certain minimum mileage separations between the respective transmitter sites of various facilities, all stations which comply with said separation requirements are entitled to apply for maximum facilities without regard for any additional allocation considerations. The licensed KDEN site complies with all applicable mileage separations, thereby entitling the station to apply for facilities at the present site which are greater than those presently authorized. Further, the station would have every reasonable expectation that such facilities would be authorized by the Commission without the need for any further allocation demonstrations.

Many UHF stations, including KDEN, operate with less than maximum facilities even though they would otherwise be entitled to do so upon the filing and subsequent grant of an appropriate application. In the case of KDEN, the licensed ERP of 5,000 kW is the maximum permissible ERP for any UHF station, but the authorized height above average terrain is approximately one half of the maximum permissible value of 610 meters which corresponds to the 5,000 kW ERP. LC25 has looked upon its ability to improve the facilities of KDEN under the present system as an intrinsic and





**ENGINEERING STATEMENT OF D.C. WILLIAMS, Ph.D., P.E., CONSULTING ENGINEER (Page 2)**

important part of its authorization.

Under the DTV allotment plan adopted in the R&O, stations seeking to improve their facilities may do so only based upon a demonstration that "no new interference is caused to other stations" (paragraph 31). Based upon the vagaries of the allocation circumstances surrounding any particular DTV allotment, such demonstration may or may not be possible. At the present time, the lack of maturity of the new allocation rules, the possible fluidity of the newly-adopted allocation system in the face of anticipated petitions for reconsideration, the Commission's stated intention to review the development and implementation of the DTV allotment system two years hence, and the lack of sufficient software modeling tools make it impossible for a licensee to determine with a high degree of certainty whether or not its existing facility will be entitled to apply for enhanced facilities on a non-interference basis.

LC25 contends that the Commission has neglected to provide existing stations which are presently afforded the opportunity to achieve comparable facilities the assurance that they will be entitled to do so in the future. Further, as the Commission is responsible for devising the DTV allotment plan, LC25 contends that it is incumbent upon the Commission to either:

- a) Devise an allotment plan which provides all stations with reasonably comparable facilities, or;
- b) Provide DTV facilities which are comparable in every respect to the maximum facilities to which stations are now entitled as a matter of right, or;
- c) Ensure that all stations enjoy an equivalent opportunity to enhance their facilities to the same comparable level without regard to allocation matters which may affect stations within the same market to different degrees, or;
- d) As a bare minimum, advise any affected stations of the fact that they have been given restrictive DTV allotments for which future upgrades will not be possible and afford them the opportunity to seek an alternative DTV allotment at the outset which will provide service commensurate with their plans and service objectives.

2. The Commission's DTV allotment system has adopted powers which differ from those originally proposed without providing an opportunity for redress by affected stations. In the Sixth Further Notice of Proposed Rulemaking ("NPRM") in FCC-96-317, MM Docket No. 87-268, adopted July 25, 1996 and released August 14, 1996, the DTV facilities proposed for KDEN specified a power of 368.8 kW. However, the facilities ultimately adopted for KDEN in the R&O

**ENGINEERING STATEMENT OF D.C. WILLIAMS, Ph.D., P.E., CONSULTING ENGINEER (Page 3)**

specify a DTV power of only 210.0 kW. LC25 recognizes that the Commission is not limited to the adoption or rejection of those proposals advanced in the NPRM. However, LC25 contends that the significant reduction in proposed DTV power for KDEN, without permitting KDEN an opportunity to avail itself of facilities comparable to those previously proposed for it, deprives the station of a valuable means of providing continuing service to the public.

Given the chance to apply for facilities greater than those presently allotted under the DTV plan and sensing the need to do so prior to losing that option under the new allotment scheme, LC25 would certainly have actively pursued such opportunity. In reality, LC25 was neither given the opportunity nor foresaw the magnitude of the facility abridgment adopted in the R&O. LC25 believes that the manner in which the facilities of KDEN have been truncated, and the magnitude of said truncation, by the R&O is contrary to the public interest, convenience, and necessity with respect to its service of the Memphis market.

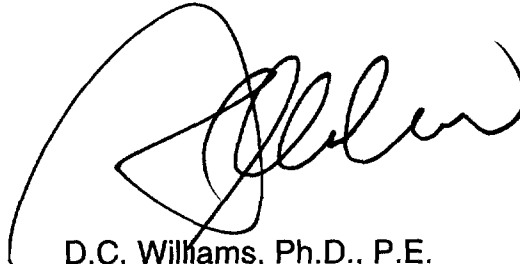
3. The Commission's DTV allotment plan has created a disparity among stations where none had previously existed. Under the present allotment system, all UHF stations were entitled to equivalent facilities limited only by the prescribed maximum facilities. Although not all stations operated with these facilities, all UHF allotments were afforded an equal piece of the spectrum and the opportunity to provide service to a roughly equivalent geographical area. Stations who chose to do so could operate with less than maximum facilities, but the existence of a fully spaced transmitter site for each allotment ensured that none were required to do so. By instituting the proposed DTV allotment plan, the Commission will essentially stratify existing television stations based on their previous NTSC facilities without regard for their future service requirements. Absent appropriate modifications to the Commission's DTV allotment plan, some stations are certain to be restricted to less than maximum facilities. This is in direct contravention of the Commission's long standing practice of attempting to maintain parity between stations of a similar classification.

Unlike the present analog allocation standards, which are based on simple and uniformly applicable standards, the system adopted in the R&O has been retrofitted to match the state of the allocation system which it is designed to replace. Unfortunately, the Commission has left the burden of restoring equitable balance between stations in a given market to the disadvantaged stations themselves while saddling some with upgrade burdens that do not exist at present and which may well prove to be incurable.

**ENGINEERING STATEMENT OF D.C. WILLIAMS, Ph.D., P.E., CONSULTING ENGINEER (Page 4)**

In summary, LC25 contends that it was not afforded the opportunity to either seek maximum facilities or even improve its facilities beyond those currently authorized before the imposition of DTV standards. LC25 notes that the DTV facilities actually authorized for KDEN are markedly less than those proposed in the earlier NPRM. Further, by adopting the DTV allotment plan in the R&O, the Commission has destroyed the balance among stations which has existed since the outset of the present allocation system. Absent corrective action in reconsideration, some stations will likely be forever relegated to substandard status due to the inferior DTV facilities which they have been allotted and their inability to comply with the non-interference conditions required to achieve a suitable upgrade. The Commission is urged to reconsider the DTV allotment plan it has adopted in the R&O to restore the facility equity which has been a fundamental tenet of the existing allocation system, particularly as it affects LC25 and KDEN.

Respectfully submitted,



D.C. Williams, Ph.D., P.E.  
Consulting Engineer

June 12, 1997

P.O. Box 1888  
Carson City, NV 89702  
(702) 885-2400



**CERTIFICATION OF ENGINEER**

I HEREBY CERTIFY:

that I am a Registered Professional Engineer, a full member of the Association of Federal Communications Consulting Engineers, and an experienced Consulting and Forensic Engineer whose qualifications and previous works are a matter of record with the Federal Communications Commission in Washington, D.C.;

that I hold the degrees of Bachelor of Science in Physics, Master of Science in Electrical Engineering, and Doctor of Philosophy in Electrical Engineering, all awarded by The University of Nevada;

that I have been retained by Longmont Channel 25, Inc. to prepare the instant engineering exhibits;

that same has been prepared by me or under my immediate supervision;

and that, under penalty of perjury, all representations contained herein are true and correct to the best of my knowledge and belief.

EXECUTED ON THIS 12th DAY OF JUNE, 1997



D.C. Williams, Ph.D., P.E.  
Consulting Engineer

